

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby gives Notice of Intended Action to amend Chapter 1, “Administration,” Chapter 4, “Public Records and Fair Information Practices,” Chapter 10, “Eligibility Guidelines for Court-Appointed Counsel,” and Chapter 12, “Claims for Indigent Defense Services,” Iowa Administrative Code.

These amendments update rules and terminology to reflect current practice, rescind unnecessary rules, and further explain state public defender practices regarding the denial of indigent defense fee claims by attorneys appointed contrary to Iowa Code section 815.10.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 29, 2011. Such written comments should be sent to Mark C. Smith, State Public Defender’s Office, 4th Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)281-7289; or E-mail msmith@spd.state.ia.us.

A public hearing will be held on November 29, 2011, at 9 a.m. in Conference Room 424, 4th Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the State Public Defender and advise of specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 13B and 815.

The following amendments are proposed.

ITEM 1. Amend subrule 1.3(1) as follows:

1.3(1) *State public defender system.* The state public defender system is administered by the state public defender. The system consists of ~~four~~ three divisions: an administrative division, a ~~trial~~ local public defender division, and an appellate division ~~and the civil commitment unit.~~

ITEM 2. Amend subrule 1.3(2) as follows:

1.3(2) *Types of cases.* Based on statutes and appropriate case law, the state public defender system provides representation for persons found to be indigent in the following types of cases:

- a. Felonies;
- b. Misdemeanors, if there exists a potential for jail sentence;
- c. Juvenile matters, including delinquency, termination of parental rights, child in need of assistance (CINA), judicial bypass proceedings, and juvenile commitments;
- d. Probation and parole revocation cases; ~~and~~
- e. Civil commitment proceedings under Iowa Code chapter 229A; and
- f. Other matters authorized by law.

ITEM 3. Amend subrule 1.3(5) as follows:

1.3(5) ~~Trial~~ Local public defender division. The ~~trial~~ local public defender division provides legal representation at the trial level to ~~indigent~~ qualified persons charged with adult crimes or in juvenile matters in counties where local public defender services are provided. The division also provides

representation to qualified persons in juvenile appeals and in civil commitment proceedings under Iowa Code chapter 229A at the trial and appellate levels.

The ~~trial~~ local public defender division consists of independent local offices and branch offices. Each independent local office is under the direct supervision of a local public defender. A local public defender may supervise a branch office. If so, the branch office may be considered part of the local office.

ITEM 4. Rescind subrule **1.3(7)**.

ITEM 5. Rescind rule 493—1.4(13B) and adopt the following **new** rule in lieu thereof:

493—1.4(13B) Information. Information concerning the office of the state public defender or the state public defender system may be obtained by contacting the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087; or by telephone (515)242-6158 or fax (515)281-7289. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays. The state public defender's Web site address is <http://spd.iowa.gov>.

ITEM 6. Rescind and reserve rule **493—1.5(13B)**.

ITEM 7. Rescind subrule **4.15(4)**.

ITEM 8. Rescind rule 493—10.7(815) and adopt the following **new** rule in lieu thereof:

493—10.7(815) Forms. The state public defender shall promulgate forms to be used in court proceedings, including an Adult Affidavit of Financial Status, Juvenile Affidavit of Financial Status, Wage Assignment, and such other forms as the state public defender deems appropriate. Such forms shall be available at the administrative office of the state public defender and published on the state public defender's Web site at <http://spd.iowa.gov>.

ITEM 9. Amend paragraph **12.2(1)“a”** as follows:

a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including misdemeanor appeals to district court, postconviction relief and applications for discretionary review or applications for interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for work performed after the granting of an application for discretionary review or for interlocutory appeal, or if full briefing is ordered following a petition on appeal, must be submitted on an Appellate form. The claim forms may be ~~obtained from the clerk of district court or~~ downloaded from the state public defender Web site: ~~www.spd.state-ia.us~~ <http://spd.iowa.gov>. Claims submitted ~~using forms downloaded from the Web site~~ that do not comply with the instructions on the Web site may be returned to the claimant for additional information and resubmission.

ITEM 10. Renumber subparagraphs **12.2(1)“b”(2) to (5)** as **12.2(1)“b”(3) to (6)**.

ITEM 11. Adopt the following **new** subparagraph **12.2(1)“b”(2)**:

(2) If, at the time of appointment, the attorney does not have a contract to represent indigent persons in the type of case and the county in which the action is pending, the appointment order must include either a finding that no attorney with a contract to represent indigent persons in that specific type of case and that county is available or a finding that the state public defender was consulted and consented to the appointment.

ITEM 12. Rescind subrule 12.2(10) and adopt the following **new** subrule in lieu thereof:

12.2(10) Claims for compensation from attorneys appointed as counsel or guardian ad litem at the trial level may be denied if the appointment does not comply with Iowa Code section 815.10.

a. Claims by attorneys whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after July 1, 2009, shall be denied if the state public defender had filed a designation effective at the time of the appointment designating a local public defender, nonprofit corporation, or attorney to represent indigent persons in that type of case in the county in which the case was filed,

unless the appointment order and any supporting documentation submitted with the claim demonstrate that:

(1) The state public defender's designee and any successor designee has withdrawn from the case or has been offered and declined to take the case; or

(2) The state public defender's designee and any successor designee would have withdrawn from or would have declined to take the case had the appointment been offered.

b. Claims by attorneys whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after February 1, 2012, shall be denied unless:

(1) At the time of the appointment, the attorney had a contract with the state public defender to represent indigent persons in that specific type of case and that county in which the the action was pending; or

(2) The appointment order includes a specific finding that no attorney with a contract to represent indigent persons in that specific type of case and that county in which the action was pending is available or a finding that the state public defender was consulted and consented to the appointment.